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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1975

No. 75-1286

PITT RIVER TRIBE OF INDIANS,
Petitioner,

vs.

PACIFIC GAS AND ELECTRIC COMPANY, et al.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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In the Supreme Court
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Pitt River Tribe of Indians,
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vs.

Pacific Gas and Electric Company, et al.,
Respondents.

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PRELIMINARY STATEMENT

This case does not present any important question of Federal law. The decision below is in accord with long-established principles of law enunciated by this Court.

Petitioner's major contention is that it, as an Indian tribe, has retained an aboriginal Indian right of occupancy in certain lands in California. The decisions of this Court, however, make it clear that any such right of occupancy of California lands has been extinguished by petitioner's failure to comply with an act of Congress. There is likewise no merit to the two other minor arguments presented in the petition.

STATUTE

The statute involved in this case is the Private Land Claims Act of 1851 (9 Stat. 631). This statute is set forth as Appendix A to this brief.

QUESTIONS PRESENTED

The questions stated in the petition include irrelevant and erroneous statements. The actual questions presented are:

1. Are petitioner's claims relating to an Indian right of occupancy barred by petitioner's failure to comply with the Private Land Claims Act of 1851?

2. Under California law, can a cause of action be stated by a pleading which alleges merely the conclusion of law that a party "occupied [land] and acquired title under the principle enunciated in *Cramer* v. *United States*, 261 U.S. 219"?

3. May an individual with no claim to land challenge a patent issued on that land?

STATEMENT OF THE CASE

Much of petitioner's statement of the "background of this litigation" (Pet., pp. 3-8) is inaccurate, irrelevant and confusing. We therefore present the following statement.

A. The parties.

The complaint herein was purportedly filed on behalf of the Pitt River Tribe of Indians and it made claim to

certain land in four counties in Northern California. Respondent Champion International Corporation, sued herein as U.S. Plywood Corporation, is a private corporation which owns property in the four counties in question. Other private corporations, owning land in the same area, were also made parties by the filing of substantially identical complaints.

B. The complaint.

The second amended complaint against respondent Champion contained fourteen purported causes of action. Most of these causes of action were based upon the claim that the Pitt River Tribe retained a tribal right of permanent occupancy in certain California lands.[1] With the exception of its ninth and tenth purported causes of action, petitioner has abandoned its arguments relating to causes of action not based on an asserted right of occupancy. The ninth cause of action seeks to attack patents on land issued to respondent's predecessors. The tenth cause of action alleges a right in land because petitioner assertedly "occupied it and acquired title under the principle enunciated in *Cramer* v. *United States*, 261 U.S. 219."

C. The decisions below.

The trial court ruled that any right of tribal occupancy had been extinguished by petitioner's failure to comply with the Private Land Claims Act of 1851. The court also ruled that each cause of action was barred by the California statutes of limitations and by laches and that prior

[1]Petitioner now estimates this to be a total of 3½ million acres, of which at least 500,000 acres were directly involved in this action (Pet., p. 8).

proceedings by the Pitt River Tribe before the Indian Claims Commission were res judicata, also preventing recovery. Petitioner evidenced its intention not to further amend its complaints and judgments of dismissal were entered in the trial court.

On appeal, the California Court of Appeal affirmed, holding that any asserted right to tribal occupancy had been extinguished by petitioner's failure to comply with the 1851 Act (Appx., pp. xiii-xiv).[2] The court also held that petitioner's ninth and tenth causes of action were deficient (Appx., pp. xiv-xvi). The California Supreme Court denied petitioner's petition for a hearing by that court.

ARGUMENT

I. AS A MATTER OF LAW, PETITIONER HAS RETAINED NO INDIAN RIGHT OF OCCUPANCY.

A. This Court has held that Indian right of occupancy has been extinguished by failure to comply with the Private Land Claims Act of 1851.

The bulk of the petition is devoted to belabored arguments that petitioner has retained a permanent right of occupancy in all the lands that once were used by its ancestors at any time prior to the acquisition of California from Mexico (Pet., pp. 3-32). Petitioner ignores, or misstates, decisions of this Court which are directly to the contrary. Under each of those decisions, any such right of occupancy in California lands has been extinguished by failure to comply with the Private Land Claims Act of March 3, 1851, 9 Stat. 631 (*Barker* v. *Harvey* (1901) 181 U.S. 481,

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[2]The decision of the California Court of Appeal, which is not published, appears as Appendix B to this brief at p. x.

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491-492; *United States* v. *Title Ins. Co.* (1924) 265 U.S. 472, 484-487; *Super* v. *Work* (1926) 271 U.S. 643, affirming *Super* v. *Work* (D.C. Cir. 1925) 3 F.2d 90, 91).

The holdings of those cases were discussed by Mr. Justice Douglas in a subsequent case in which it was argued that Congress had, by statutes, acted with respect to Indian right of occupancy in Arizona as it had in California (*U.S.* v. *Santa Fe Pacific R. Co.* (1941) 314 U.S. 339). Justice Douglas, writing for a unanimous Court, rejected that argument, declaring that the statutes in question in the Arizona case

> "• • • were quite different from the Act of March 3, 1851, 9 Stat. 631, passed to ascertain and settle certain land claims in California. Under § 13 of that Act 'all lands the claims to which shall not have been presented' to the commissioners, appointed to receive and act upon all petitions for confirmation of land claims, 'within two years after the date of this act, shall be deemed, held, and considered as part of the public domain of the United States.' This Court passed on that Act in *Barker* v. *Harvey*, 181 U.S. 481. The plaintiff there claimed under two Mexican grants. The defendants were Indians who claimed a right of permanent occupancy; but they had not presented their claims to the commissioners within the time specified by § 13. This Court held that as a result of that failure their claims were barred. And see *United States* v. *Title Insurance & Trust Co., supra*, 265 U.S. 472. That is to say, *the Act of 1851 was interpreted as containing machinery for extinguishment of claims, including those based on Indian right of occupancy. Since Congress had provided a method for extinguishment, its appropriateness raised only a political, not a justiciable,*

issue" (U.S. v. *Santa Fe Pacific R. Co.* (1941) 314 U.S. 339, 350-351; emphasis added).

Petitioner has always acknowledged that no claim was submitted on the lands here in question. Hence, those lands became a part of the public domain unfettered by any tribal right of occupancy.

B. Petitioner cannot distinguish the decisions of this Court.

Petitioner cannot, and does not seriously attempt to, distinguish this Court's decisions on the question of the effect of the 1851 Act. Each is decisive of petitioner's claim. In *Barker* v. *Harvey* (1901) 181 U.S. 481, this Court, in words applicable to petitioner's present claim, observed:

> "As between the United States and the Indians, their failure to present their claims to the land commission within the time named made the land within the language of the statute 'part of the public domain of the United States.' * * * So far, therefore, as these Indians are concerned the land is rightfully to be regarded as part of the public domain and subject to sale and disposal by the Government * * *" (181 U.S. 490).

That decision expressly rejected the suggestion, made again in the petition (Pet., pp. 28-29), that the lands passed subject to a right of Indian occupancy (181 U.S. 491-492).

Claims similar to petitioner's were once more presented in *United States* v. *Title Ins. Co.* (1924) 265 U.S. 472. Petitioner implicitly recognizes the similarities between its claims and those presented in that case by relying

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upon, and summarizing at length, the brief of the *losing* party (Pet., pp. 18-22). It was there argued, as petitioner now argues, that *Barker* v. *Harvey* should not be followed. To that argument, this Court replied:

> "The question whether that decision shall be followed here or overruled admits of but one answer. The decision was given twenty-three years ago and affected many tracts of land in California, particularly in the southern part of the State. In the meantime there has been a continuous growth and development in that section, land values have enhanced, and there have been many transfers. Naturally there has been reliance on the decision. The defendants in this case purchased fifteen years after it was made. It has become a rule of property, and to disturb it now would be fraught with many injurious results" (*United States* v. *Title Ins. Co.* (1924) 265 U.S. 472, 486).

The matter came before this Court on one more occasion. In *Super* v. *Work* (D.C.Cir. 1925) 3 F.2d 90, it was argued that the Act of 1851 did not operate to extinguish asserted rights of occupancy of roving bands of Indians, such as petitioner's ancestors, who made claims to large portions of the public domain. The Court of Appeals rejected that argument (3 F.2d 91) and this Court affirmed per curiam, citing both *Barker* v. *Harvey* and *United States* v. *Title Ins. Co.* (*Super* v. *Work* (1926) 271 U.S. 643).

The passage of 50 additional years has added incalculable weight to the holdings of this Court. No ground for overturning them has been shown. It would now be an understatement to observe that disturbance of those

cases "would be fraught with many injurious results" (*United States* v. *Title Ins. Co.* (1924) 265 U.S. 472, 486).

C. Petitioner's asserted Constitutional claims are meritless.

This Court has also answered petitioner's "hard questions" (Pet., pp. 25-26) with respect to the Constitutional implications of asserted fraud and violence on the part of the United States and the State of California. Redress in such cases obviously could be had only against the offending governments, not private persons. And, as this Court has held,

> "[t]he power of Congress in that regard [i.e., extinguishment of Indian title] is supreme. The manner, method and time of such extinguishment raise political, not justiciable, issues. * * * [W]hether it be done by treaty, by the sword, by purchase, by the exercise of complete dominion adverse to the right of occupancy, or otherwise, its justness is not open to inquiry in the courts" (*U.S.* v. *Santa Fe Pacific R. Co.* (1941) 314 U.S. 339, 347).

For the same reasons, there is no basis for petitioner's request for an "evidentiary hearing" regarding alleged violations of Constitutional rights (see Pet., pp. 1, 26, 31). Petitioner's remedy for its alleged wrongs is to seek relief directly from Congress. Congress has, in fact, passed statutes to provide compensation for lands taken by the Government and Indians have been granted awards under those statutes (see *The Pitt River Indians of California* v. *United States of America* (1959) 7 Ind.Cl.Com. 815; *Thompson, et al.* v. *The United States of America* (1964) 13 Ind.Cl.Com. 369). If petitioner, or any of its members,

are dissatisfied with such awards, their recourse is to seek additional relief from Congress.[3]

II. PETITIONER STATED NO CAUSE OF ACTION UNDER THE DECISION IN CRAMER v. UNITED STATES.

Although petitioner was given an opportunity to amend its complaint, it declined to do so. Under California law, petitioner is therefore presumed to have pleaded its strongest possible case (*Sierra Investment Corp.* v. *County of Sacramento* (1967) 252 Cal.App.2d 339, 341, 60 Cal. Rptr. 519, 520). Petitioner's tenth cause of action alleges only that

> "After March 3, 1853, while Pitt River land was part of the public domain, plaintiff occupied it and acquired title under the principle enunciated in *Cramer* v. *United States*, 261 U.S. 219."

The California Court of Appeal held that this allegation was insufficient because it was a mere conclusion of law (Appx., pp. xv-xvi).

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[3]The petition contains several unsupported assertions regarding previous awards to Indians (see Pet., p. 7). The fact is that governmental liability was found on the ground that the Pitt River Tribe's right of occupancy had been extinguished by the Tribe's failure to comply with the 1851 Act (*The Pitt River Indians of California* v. *United States of America* (1959) 7 Ind.Cl.Com. 815, 844-849, 862). A settlement as to the amount of compensation was thereafter agreed upon, and the Pitt River Indians and other California Indians were awarded compensation in the amount of $29,100,000 (*Thompson, et al.* v. *The United States of America* (1964) 13 Ind.Cl.Com. 369). Some individuals sought to upset the settlement but were unsuccessful in their efforts (see *Andrade* v. *United States* (Ct.Cl. 1973) 485 F.2d 669, cert. den. sub nom. *Pitt River Tribe, et al.* v. *The United States* (1974) 419 U.S. 831). That matter is now final.

Petitioner itself now concedes that the allegation amounts to nothing more than pleading "whatever you [this Court] require in *Cramer* we plead" (Pet., p. 33). It seeks to excuse such an approach by asserting that this Court's decision in *Cramer* establishes an "amorphous standard" (Pet., p. 33). The decision in *Cramer* is, to the contrary, quite clear. It did not involve any claim of past tribal occupancy. Rather, it involved the claims of three Indians, who, for sixty years, had occupied, fenced and cultivated a specific portion of land which was later included in a larger grant to the defendant. That grant, however, excepted from its operation land "reserved * * * or otherwise disposed of" (261 U.S. 227-230). This Court held that actual possession of the land—which possession had been open to observation by all, both before and at the time of the grant to the defendant—fell within the exception. Recovery was expressly limited to land actually enclosed and occupied (261 U.S. 234-236). It was emphasized that the Indians had obtained possessory rights because of their action "in abandoning their nomadic habits and attaching themselves to a definite locality, reclaiming, cultivating and improving the soil and establishing fixed homes thereon" (261 U.S. 228).

Contrary to petitioner's assertion, the tenth cause of action did not allege that "specific" land was enclosed and occupied (Pet., p. 32). Petitioner does not, and certainly cannot, contend that it enclosed and occupied the entire 3½ million acres to which, elsewhere in the complaint, it made a claim of right of Indian occupancy. The complaint alleged no more than that unspecified land was "occupied." This was patently insufficient.

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III. PETITIONER HAS NO STANDING TO ATTACK PATENTS ISSUED TO RESPONDENT'S PREDECESSORS.

In its purported ninth cause of action, petitioner sought to challenge patents issued to respondent's predecessors. It is established that, even if there may have been error in the issuance of a patent, a stranger with no interest in the land cannot maintain an action to challenge the patent (*Burke* v. *Southern Pacific R. R. Co.* (1913) 234 U.S. 669, 692-693; *Lee* v. *Johnson* (1885) 116 U.S. 48, 49-50; *Bohall* v. *Dilla* (1884) 114 U.S. 47, 50-51). Petitioner did not allege title to, ownership of, or any other right in the land prior to the issuance of the patents which it sought to challenge. Moreover, in view of the decisions of this Court reviewed in the first part of this brief (pp. 4-8), it could not have done so. Accordingly, it had no standing to challenge the patents.

None of the cases cited by petitioner (Pet., pp. 36-37) is to the contrary. They involve either challenges by individuals with a prior right[4] or by the Government itself.[5]

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[4] *Duluth & Iron Range Railroad Co.* v. *Roy* (1898) 173 U.S. 587, 590-591; *Hedrick* v. *Atchison, Topeka &c. Railroad* (1896) 167 U.S. 673, 681; *Doolan* v. *Carr* (1887) 125 U.S. 618, 632-633; *Wright* v. *Roseberry* (1886) 121 U.S. 488, 520; *Kissell* v. *St. Louis Public Schools* (1855) 59 U.S. 19, 27-28; *Johnson* v. *Towsley* (1871) 13 Wall. (80 U.S.) 72, 84-85; *Bagnell* v. *Broderick* (1839) 13 Pet. (38 U.S.) 436, 450.

[5] *United States* v. *Beebe* (1887) 127 U.S. 338, 342.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

Dated at San Francisco, California, on April 2, 1976.

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(Appendices Follow)

Appendix A

An Act to ascertain and settle the private Land Claims in the State of California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of ascertaining and settling private land claims in the State of California, a commission shall be, and is hereby, constituted, which shall consist of three commissioners, to be appointed by the President of the United States, by and with the advice and consent of the Senate, which commission shall continue for three years from the date of this act, unless sooner discontinued by the President of the United States.

SEC. 2. *And be it further enacted,* That a secretary, skilled in the Spanish and English languages, shall be appointed by the said commissioners, whose duty it shall be to act as interpreter, and to keep a record of the proceedings of the board in a bound book, to be filed in the office of the Secretary of the Interior on the termination of the commission.

SEC. 3. *And be it further enacted,* That such clerks, not to exceed five in number, as may be necessary, shall be appointed by the said commissioners.

SEC. 4. *And be it further enacted,* That it shall be lawful for the President of the United States to appoint an agent learned in the law, and skilled in the Spanish and English languages, whose special duty it shall be to superintend the interests of the United States in the premises, to continue him in such agency as long as the

public interest may, in the judgment of the President, require his continuance, and to allow him such compensation as the President shall deem reasonable. It shall be the duty of the said agent to attend the meetings of the board, to collect testimony in behalf of the United States, and to attend on all occasions when the claimant, in any case before the board, shall take depositions; and no deposition taken by or in behalf of any such claimant shall be read in evidence in any case, whether before the commissioners, or before the District or Supreme Court of the United States, unless notice of the time and place of taking the same shall have been given in writing to said agent, or to the district attorney of the proper district, so long before the time of taking the deposition as to enable him to be present at the time and place of taking the same, and like notice shall be given of the time and place of taking any deposition on the part of the United States.

SEC. 5. *And be it further enacted,* That the said commissioners shall hold their sessions at such times and places as the President of the United States shall direct, of which they shall give due and public notice; and the marshal of the district in which the board is sitting shall appoint a deputy, whose duty it shall be to attend upon the said board, and who shall receive the same compensation as is allowed to the marshal for his attendance upon the District Court.

SEC. 6. *And be it further enacted,* That the said commissioners, when sitting as a board, and each commissioner at his chambers, shall be, and are, and is hereby, authorized to administer oaths, and to examine witnesses

in any case pending before the commissioners, that all such testimony shall be taken in writing, and shall be recorded and preserved in bound books to be provided for that purpose.

SEC. 7. *And be it further enacted*, That the secretary of the board shall be, and he is hereby, authorized and required, on the application of the law agent or district attorney of the United States, or of any claimant or his counsel, to issue writs of subpœna commanding the attendance of a witness or witnesses before the said board or any commissioner.

SEC. 8. *And be it further enacted*, That each and every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government, shall present the same to the said commissioners when sitting as a board, together with such documentary evidence and testimony of witnesses as the said claimant relies upon in support of such claims; and it shall be the duty of the commissioners, when the case is ready for hearing, to proceed promptly to examine the same upon such evidence, and upon the evidence produced in behalf of the United States, and to decide upon the validity of the said claim, and, within thirty days after such decision is rendered, to certify the same, with the reasons on which it is founded, to the district attorney of the United States in and for the district in which such decision shall be rendered.

SEC. 9. *And be it further enacted*, That in all cases of the rejection or confirmation of any claim by the board of commissioners, it shall and may be lawful for the claimant or the district attorney, in behalf of the

United States, to present a petition to the District Court of the district in which the land claimed is situated, praying the said court to review the decision of the said commissioners, and to decide on the validity of such claim; and such petition, if presented by the claimant, shall set forth fully the nature of the claim and the names of the original and present claimants, and shall contain a deraignment of the claimant's title, together with a transcript of the report of the board of commissioners, and of the documentary evidence and testimony of the witnesses on which it was founded; and such petition, if presented by the district attorney in behalf of the United States, shall be accompanied by a transcript of the report of the board of commissioners, and of the papers and evidence on which it was founded, and shall fully and distinctly set forth the grounds on which the said claim is alleged to be invalid, a copy of which petition, if the same shall be presented by a claimant, shall be served on the district attorney of the United States, and, if presented in behalf of the United States, shall be served on the claimant or his attorney; and the party upon whom such service shall be made shall be bound to answer the same within a time to be prescribed by the judge of the District Court; and the answer of the claimant to such petition shall set forth fully the nature of the claim, and the names of the original and present claimants, and shall contain a deraignment of the claimant's title; and the answer of the district attorney in behalf of the United States shall fully and distinctly set forth the grounds on which the said claim is alleged to be invalid, copies of which answers shall be served upon the adverse party thirty days before

the meeting of the court, and thereupon, at the first term of the court thereafter, the said case shall stand for trial, unless, on cause shown, the same shall be continued by the court.

SEC. 10. *And be it further enacted*, That the District Court shall proceed to render judgment upon the pleadings and evidence in the case, and upon such further evidence as may be taken by order of the said court, and shall, on application of the party against whom judgment is rendered, grant an appeal to the Supreme Court of the United States, on such security for costs in the District and Supreme Court, in case the judgment of the District Court shall be affirmed, as the said court shall prescribe; and if the court shall be satisfied that the party desiring to appeal is unable to give such security, the appeal may be allowed without security.

SEC. 11. *And be it further enacted*, That the commissioners herein-provided for, and the District and Supreme Courts, in deciding on the validity of any claim brought before them under the provisions of this act, shall be governed by the treaty of Guadaloupe Hidalgo, the law of nations, the laws, usages, and customs of the government from which the claim is derived, the principles of equity, and the decisions of the Supreme Court of the United States, so far as they are applicable.

SEC. 12. *And be it further enacted*, That to entitle either party to a review of the proceedings and decision of the commissioners hereinbefore provided for, notice of the intention of such party to file a petition to the District Court shall be entered on the journal or record of proceedings of the commissioners within sixty days

after their decision on the claim has been made and notified to the parties, and such petition shall be filed in the District Court within six months after such decision has been rendered.

SEC. 13. *And be it further enacted,* That all lands, the claims to which have been finally rejected by the commissioners in manner herein provided, or which shall be finally decided to be invalid by the District or Supreme Court, and all lands the claims to which shall not have been presented to the said commissioners within two years after the date of this act, shall be deemed, held, and considered as part of the public domain of the United States; and for all claims finally confirmed by the said commissioners, or by the said District or Supreme Court, a patent shall issue to the claimant upon his presenting to the general land office an authentic certificate of such confirmation, and a plat or survey of the said land, duly certified and approved by the surveyor-general of California, whose duty it shall be to cause all private claims which shall be finally confirmed to be accurately surveyed, and to furnish plats of the same; and in the location of the said claims, the said surveyor-general shall have the same power and authority as are conferred on the register of the land office and receiver of the public moneys of Louisiana, by the sixth section of the act "to create the office of surveyor of the public lands for the State of Louisiana," approved third March, one thousand eight hundred and thirty-one: *Provided, always,* That if the title of the claimant to such lands shall be contested by any other person, it shall and may be lawful for such person to present a

petition to the district judge of the United States for the district in which the lands are situated, plainly and distinctly setting forth his title thereto, and praying the said judge to hear and determine the same, a copy of which petition shall be served upon the adverse party thirty days before the time appointed for hearing the same. *And provided, further,* That it shall and may be lawful for the district judge of the United States, upon the hearing of such petition, to grant an injunction to restrain the party at whose instance the claim to the said lands has been confirmed, from suing out a patent for the same, until the title thereto shall have been finally decided, a copy of which order shall be transmitted to the commissioner of the general land office, and thereupon no patent shall issue until such decision shall be made, or until sufficient time shall, in the opinion of the said judge, have been allowed for obtaining the same; and thereafter the said injunction shall be dissolved.

SEC. 14. *And be it further enacted,* That the provisions of this act shall not extend to any town lot, farm lot, or pasture lot, held under a grant from any corporation or town to which lands may have been granted for the establishment of a town by the Spanish or Mexican government, or the lawful authorities thereof, nor to any city, or town, or village lot, which city, town, or village existed on the seventh day of July, eighteen hundred and forty-six; but the claim for the same shall be presented by the corporate authorities of the said town, or where the land on which the said city, town, or village was originally granted to an individual, the

claim shall be presented by or in the name of such individual, and the fact of the existence of the said city, town, or village on the said seventh July, eighteen hundred and forty-six, being duly proved, shall be prima facie evidence of a grant to such corporation, or to the individual under whom the said lot-holders claim; and where any city, town, or village shall be in existence at the time of passing this act, the claim for the land embraced within the limits of the same may be made by the corporate authority of the said city, town, or village.

SEC. 15. *And be it further enacted,* That the final decrees rendered by the said commissioners, or by the District or Supreme Court of the United States, or any patent to be issued under this act, shall be conclusive between the United States and the said claimants only, and shall not affect the interests of third persons.

SEC. 16. *And be it further enacted,* That it shall be the duty of the commissioners herein provided for to ascertain and report to the Secretary of the Interior the tenure by which the mission lands are held, and those held by civilized Indians, and those who are engaged in agriculture or labor of any kind, and also those which are occupied and cultivated by Pueblos or Rancheros Indians.

SEC. 17. *And be it further enacted,* That each commissioner appointed under this act shall be allowed and paid at the rate of six thousand dollars per annum: that the secretary of the commissioners shall be allowed and paid at the rate of four thousand dollars per annum; and the clerks herein provided for shall be allowed and paid at the rate of one thousand five hundred dollars per annum; the

aforesaid salaries to commence from the day of the notification by the commissioners of the first meeting of the board.

SEC. 18. *And be it further enacted,* That the secretary of the board shall receive no fee except for furnishing certified copies of any paper of record, and for issuing writs of subpoena. For furnishing certified copies of any paper or record, he shall receive twenty cents for every hundred words, and for issuing writs of subpoena, fifty cents for each witness; which fees shall be equally divided between the said secretary and the assistant clerk.

APPROVED, MARCH 3, 1851.

Appendix B

In the Court of Appeal
State of California
Third Appellate District
(Shasta)

3 Civil
No. 14408

Pitt River Tribe of Indians, Plaintiff and Appellant, vs. Pacific Gas and Electric Company, Defendant and Respondent.	(Superior Ct. No. 43237)
Pitt River Tribe of Indians, Plaintiff and Appellant, vs. The Hearst Corporation, Defendant and Respondent.	(Superior Ct. No. 43298)
Pitt River Tribe of Indians, Plaintiff and Appellant, vs. Kimberly-Clark Corporation, Defendant and Respondent.	(Superior Ct. No. 43317)
Pitt River Tribe of Indians, Plaintiff and Appellant, vs. Publishers Forest Products, Defendant and Respondent.	(Superior Ct. No. 43318)
Pitt River Tribe of Indians, Plaintiff and Appellant, vs. Diamond International Company, Defendant and Respondent.	(Superior Ct. No. 43319)

BLEED THROUGH

Pitt River Tribe of Indians, Plaintiff and Appellant, vs. Fruit Growers Supply Company, Defendant and Respondent.	(Superior Ct. No. 43321)
Pitt River Tribe of Indians, Plaintiff and Appellant, vs. U. S. Plywood Corporation, Defendant and Respondent.	(Superior Ct. No. 43577)
Pitt River Tribe of Indians, Plaintiff and Appellant, vs. Southern Pacific Land Company, Defendant and Respondent.	(Superior Ct. No. 44640)

Plaintiff, Pitt River Tribe of Indians (hereinafter ("Tribe"), appeals following judgments of dismissal in eight individual cases after Tribe declined to amend second amended complaints for recovery of real property, quiet title, trespass and damages to which defendants' demurrers had been sustained with leave to amend.[1]

Tribe's second amended complaints contain fourteen causes of action. The first eight causes of action are grounded on an allegation of ancient ownership by Tribe of the subject property. Three of the first eight causes

[1]Each complaint names only one defendant. The eight complaints and the issues presented by each case are identical. The cases are consolidated on appeal as they were in the trial court. The several defendants are: Pacific Gas and Electric Co., The Hearst Corporation, Kimberly-Clark Corporation, Publishers Forest Products, Diamond International Company, Fruit Growers Supply Company, U.S. Plywood Corporation, Southern Pacific Land Company.

of action also allege that if Tribe was subsequently divested of title by operation of certain federal statutes, such divestiture was (a) in violation of its rights under the United States Constitution, Amendments V and IX, and the Treaty of Guadalupe Hidalgo; (b) the result of "genocidal acts of Federal and State Governments and by white settlers;" (c) the result of fraud practiced against Tribe by its guardian, the federal government. Of the remaining causes of action, none allege Tribe's ancient ownership of the subject property. Three of them, asserting no right of ownership at all, allege invalidity of the patents from the federal government to defendant's predecessors in title and that the land thus remains in the public domain with a consequent right of occupancy and use inhering in Tribe. Two of the remaining causes of action are based on allegations of title acquired after 1853 respectively by adverse possession and under the doctrine of Cramer v. United States (1922) 261 U.S. 219. The fourteenth cause of action alleges that if Tribe lost title, it retained the right to gather food, fish, hunt and cut trees on the subject property.[2]

The trial court sustained both special and general demurrers to each of the several causes of action in the second amended complaints on grounds, inter alia, that the

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[2]The fourteenth cause of action is patently inadequate to state a cause of action, being wholly without essential direct averments of the bases upon which Tribe asserts the right to use the land. To demonstrate its inadequacy, the fourteenth cause of action is herewith set out in its entirety: "Plaintiff denies that it lost title to Pitt River land by operation of the Statutes of March 3, 1851 and March 3, 1853, but if it was [*sic*] so lost plaintiff retained the right to fish, hunt, gather food and cut trees on said land. Defendant has prevented, and still does prevent plaintiff from exercising said rights."

facts stated were insufficient to constitute a cause of action.

If, as defendants contend, ownership of the land by Tribe "from time immemorial" was extinguished by operation of an act of Congress (An Act to ascertain and settle the private Land Claims in the State of California, March 3, 1851, ch. 41, 9 Stat. 631), the trial court correctly sustained the demurrers to the first eight causes of action which were grounded on a claim of ancient ownership antedating the operative date of the cited statute. After examining authoritative decisions of the federal courts construing the effect of the Act of March 3, 1851 (see United States v. Reynolds (1914) 235 U.S. 133, 148; 6 Witkin, Cal. Procedure (2d ed. 1971) Appeal, § 673, pp. 4586-4587), we are constrained to agree with the position taken by defendants. Any interest of Tribe in the subject lands dependent upon ownership or possession "from time immemorial" was extinguished by failure of Tribe to comply with the cited enactment.[3] (Barker v. Harvey (1901) 181 U.S. 481, 491-492; United States v. Title Ins. Co. (1924) 265 U.S. 472, 484-487; Super v. Work (1925) 3 F.2d 90, 91, aff'd 271 U.S. 643; see also Thompson v. Doaksum (1886) 68 Cal. 593.) Furthermore, the power of Congress

[3]The Act of March 3, 1851, followed ratification of the Treaty of Guadalupe Hidalgo (9 Stat. 922) and set up a procedure for hearing and determining claims to California land arising ". . . by virtue of any right or title derived from the Spanish or Mexican government, . . ." (Ch. 41, 9 Stat. 632.) The Act further provided that all lands, the claims to which have been rejected as provided therein, and ". . . all lands the claims to which shall not have been presented [as provided therein] within two years after the date of this act, shall be deemed, held, and considered as part of the public domain of the United States." (Ch. 41, 9 Stat. 633.) It appears from the face of the complaints herein that Tribe did not present a claim to the subject lands as provided by the Act.

over extinguishment of Indian title based on aboriginal possession is supreme. "The manner, method and time of such extinguishment raise political, not justiciable, issues."[4] (U. S. v. Santa Fe Pacific R. Co. (1941) 314 U.S. 339, 347; Tee-Hit-Ton Indians v. United States (1955) 348 U.S. 272, 281, 284-285.)

We consider now the three causes of action which attack the validity of the patents issued to defendants predecessors in interest. A patent " 'is a title from its date, and has always been held conclusive against all those whose rights did not commence previous to its emanation. . . . If the patent has been issued irregularly, the Government may provide means for repealing it; but no individual has a right to annul it, to consider the land as still vacant, and to appropriate it to himself.' " (Burke v. Southern Pacific R.R. Co. (1914) 234 U.S. 669, 692-693.) To attack the title of a patentee and compel transfer thereof, the claimant must show that he himself was entitled to the patent from the government and that, because of erroneous rulings of the responsible government officials, it was refused to him. It is not sufficient to show that there may have been error in awarding title to the patentee. It must appear that by law the title should have been conferred upon the claimant. (Bohall v. Dilla (1885) 114 U.S. 47, 50-51.) Moreover, in the absence of an act of Congress, only the federal attorney general or his authorized designee may sue to set aside a patent issued by the United States. (United States v. Throckmorton (1878) 98 U.S.

[4]For this reason the trial court did not err in denying Tribe's motion for an evidentiary hearing to demonstrate the constitutional infirmity of the Act of March 3, 1851, and the manner of its implementation.

61; Northern Pac. Ry. Co. v. McComas (1919) 250 U.S. 387, 393.)

Survey and sale of lands in the public domain in California, including all lands here involved to which title was not confirmed under the Act of March 3, 1851, was provided for by Congress in the Act of March 3, 1853 (An Act to provide for the Survey of the Public Lands in California, etc. (ch. 145, 10 Stat. 244). In these three causes of action, Tribe does not allege title to or ownership of the land prior to the issuance under the 1851 or 1853 Acts of patents to defendants' predecessors in interest or any other basis upon which it was itself entitled to award of the patents. Thus Tribe has no standing to contest the validity of the patents under which defendants deraign title.

The tenth cause of action purports to be predicated upon the doctrine of Cramer v. United States, supra, 261 U.S. 219. In that case it was shown that for approximately seven years after 1853 Indians had lived upon 150 to 175 acres of land in the public domain in California which they had fenced, irrigated, cultivated and upon which they had erected houses and outbuildings. Their claim to a possessory interest therein was upheld as against that of the government's grantee of a larger parcel which included the Indian land but from which were excepted lands which had been "granted, sold, reserved, occupied by homestead settlers, or otherwise disposed of." (*Cramer*, supra, p. 225.) In holding that the land occupied by the Indians was land which had been "otherwise disposed of" within the meaning of the grant, the Supreme Court characterized the Indians' possession as "definite and substantial in

character and open to observation" at the time the subsequent grant was made. (*Cramer*, supra, at p. 230).[5]

The operative portion of the tenth cause of action in its entirety alleges: "After March 3, 1853, while Pitt River land was part of the public domain, plaintiff occupied it and acquired title under the principle enunciated in *Cramer v. United States*, 261 U.S. 219." The foregoing allegations, constituting no more than a conclusion of law, are demonstrably insufficient to tender an issue under the *Cramer* rule. Inasmuch as Tribe elected not to amend, we assume that it pleaded its strongest possible case. (Sierra Investment Corp. v. County of Sacramento (1967) 252 Cal. App.2d 339, 341.)

Tribe's eleventh cause of action is framed on the theory of adverse possession. The operative part thereof reveals an entire lack of ultimate facts essential to invoke the substantive right asserted. It is there alleged that "After March 3, 1853, plaintiff acquired title to Pitt River land by adverse possession." The allegation is no more than a conclusion of law, insufficient as a matter of law to state a cause of action. (See Code Civ. Proc., § 749.)

The foregoing discussion adequately disposes of the issues raised on this appeal. Other contentions raised by the defendants therefore do not require discussion.

The judgments are affirmed.

Puglia, P. J.

We concur:

Regan, J.

Janes, J.

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[5]The court held that the Indians were not barred by the Act of March 3, 1851, for failure to present a claim because their claim did not arise from the Spanish or Mexican governments and they were not occupying the lands in question when the Act was passed.